

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CLAUDIO MORAIS DOS SANTOS,

Plaintiff,

v.

UNITE HERE LOCAL 8,

Defendant.

CASE NO. 2:22-cv-01171-LK

ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS

Before the Court is Defendants Natalie Kelly, Jacob Simpson, and Unite Here Local 8's Motion to Dismiss for Failure to State a Claim. Dkt. No. 7. Plaintiff Claudio Dos Santos, proceeding pro se, opposes the motion. Dkt. No. 13. The Court has reviewed the parties' submissions, the balance of the record, and relevant law. Being fully advised, the Court GRANTS Defendants' motion.

I. BACKGROUND

Mr. Dos Santos is a dues paying member of Defendant Unite Here Local 8 ("Local 8"), a Washington union. Dkt. No. 1 at 2, 5. Mr. Dos Santos alleges that Local 8 "was supposed to rule and protect us," but "they never for 4 years did anything to control First Goal Hospitality/Levy

1 and took[] every month money from [his] pay.” *Id.* at 5. “First Goal Hospitality” and “Levy” are
2 or were Mr. Dos Santos’s employers, *see, e.g.*, Dkt. No. 13 at 1 (accusing Local 8 of failing to
3 “protect [him] as employee of Levy Premium Food Service”), but are not named as defendants in
4 this action. Mr. Dos Santos does name as defendants Kelly and Simpson, who are union officers.
5 Dkt. No. 1 at 2. He filed the instant action on August 22, 2022, seeking \$10,000 for his alleged
6 injuries. Dkt. No. 1-1. Defendants filed the instant motion to dismiss on September 27, 2022. Dkt.
7 No. 7.

8 II. DISCUSSION

9 The Court first dismisses Kelly and Simpson from this action because Mr. Dos Santos
10 concedes that he did not intend to name them as defendants in this action. The Court then reviews
11 the relevant legal standard before turning to Defendants’ motion to dismiss Mr. Dos Santos’s
12 claims against Local 8.

13 A. Ms. Kelly and Mr. Simpson are Dismissed

14 In his complaint, Mr. Dos Santos names Kelly and Simpson as defendants. Dkt. No. 1 at 2.
15 Kelly and Simpson are officers of Local 8. *See id.* Defendants move to dismiss Kelly and Simpson,
16 contending that individual union members are not liable to other union members who allege the
17 union violated its duty of fair representation. Dkt. No. 7 at 8–9 (first citing *Atkinson v. Sinclair*
18 *Refining Co.*, 370 U.S. 238, 249 (1962), and then citing *Williams v. Pac. Mar. Ass’n*, 421 F.2d
19 1287, 1289 (9th Cir. 1970)). In his reply, Mr. Dos Santos clarifies that he did not intend to name
20 Ms. Kelly or Mr. Simpson as defendants. Dkt. No. 13 at 1 (“[I]t is not true that I am trying to sue
21 Mr[.] Jacob Simpson and Mrs[.] Natalie Kelly[.]”). Accordingly, the Court DISMISSES Natalie
22 Kelly and Jacob Simpson from this action.

B. Standard for a Motion to Dismiss

Federal Rule of Civil Procedure 12(b)(6) provides for dismissal when a complaint “fail[s] to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). Under this standard, the Court construes the complaint in the light most favorable to the nonmoving party, *Livid Holdings Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d 940, 946 (9th Cir. 2005), and asks whether the complaint contains “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face,’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The Court need not, however, accept as true legal conclusions or “formulaic recitations of the elements of a cause of action.” *Chavez v. United States*, 683 F.3d 1102, 1008 (9th Cir. 2012) (cleaned up). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.

C. Defendants’ Motion to Dismiss

Defendants interpret Mr. Dos Santos’s complaint as a claim that Local 8 breached its duty of fair representation. Dkt. No. 7 at 6. Mr. Dos Santos does not dispute this characterization, but in his opposition brief he adds that he was not protected from “discrimination, persecution, retaliation, etc.” in the workplace. Dkt. No. 13 at 1.

The duty of fair representation is implied under the scheme of the National Labor Relations Act and is “imposed on labor organizations because of their status as the exclusive bargaining representative for all of the employees in a given bargaining unit.” *Peterson v. Kennedy*, 771 F.2d 1244, 1253 (9th Cir. 1985); *see also Abrams v. Carrier Corp.*, 434 F.2d 1234, 1251 (2nd Cir. 1970) (noting that the duty of fair representation is “a federal obligation which has been judicially fashioned from national labor statutes”). “Mere negligence on the part of the union does not constitute a breach of the duty of fair representation.” *Slevira v. W. Sugar Co.*, 200 F.3d 1218,

1 1221 (9th Cir. 2000). Rather, to bring a claim for breach of the duty of fair representation, a
2 plaintiff must plausibly allege his union’s conduct toward him was “arbitrary, discriminatory, or
3 in bad faith.” *Vaca v. Sipes*, 386 U.S. 171, 190 (1967); *see also Garrity v. APWU Nat’l Labor*
4 *Org.*, 828 F.3d 848, 864 (9th Cir. 2016) (describing this as “a rather deferential standard”).

5 In this context, a union’s actions are arbitrary “only when it is irrational, when it is without
6 a rational basis or explanation.” *Garrity*, 828 F.3d at 879 (quoting *Marquez v. Screen Actors Guild,*
7 *Inc.*, 525 U.S. 33, 46 (1998)). “A union’s decision to discriminate against its members on an
8 impermissible basis will violate the duty of fair representation only where the aggrieved members
9 set forth ‘substantial evidence of discrimination that is intentional, severe, and unrelated to
10 legitimate union objectives.’” *Demetris v. Transp. Workers Union of Am., AFL-CIO*, 862 F.3d 799,
11 806 (9th Cir. 2017) (quoting *Amalgamated Ass’n of Street, Elec. Ry. & Motor Coach Emps. of Am.*
12 *v. Lockeridge*, 403 U.S. 274, 301 (1971)). Finally, to state a plausible claim that a union breached
13 its duty of fair representation through bad faith conduct, a plaintiff “must plead facts that, if true,
14 show ‘substantial evidence of fraud, deceitful action or dishonest conduct.’” *Id.* at 808 (quoting
15 *Beck v. United Food and Com. Workers Union, Local 99*, 506 F.3d 874, 880 (9th Cir. 2007)).
16 Under any of these theories of recovery, a plaintiff’s complaint can only survive a motion to
17 dismiss by pleading facts that would allow the Court to draw a reasonable inference that his union’s
18 conduct fell into one of these categories. *See Iqbal*, 556 U.S. at 678.

19 Defendants argue that Mr. Dos Santos’s bare allegation that Local 8 “never for 4 years did
20 anything to control First Goal Hospitality/Levy” does not state a plausible claim for relief under
21 any theory of recovery for breach of the duty of representation. *See* Dkt. No. 1 at 5; Dkt. No. 7 at
22 8 (“The complaint does not indicate *what* Local 8 did wrong, *who* on Local 8’s behalf acted or
23 failed to act, or *when* such acts or omissions took place.” (emphasis in original)). Mr. Dos Santos
24 responds that Local 8 “never did anything to protect [him from] discrimination, persecution,

1 retaliation, etc.,” were “very negligent[,]” and “never paid attention to [his] complaints.” Dkt. No.
2 13 at 1–2.¹ However, Mr. Dos Santos does not identify specific facts in support of these allegations
3 or demonstrate how these alleged failures constitute discrimination or arbitrary or bad faith
4 conduct. *See generally id.* Moreover, negligence does not constitute breach of the duty of fair
5 representation. *Slevira*, 200 F.3d at 1221.

6 To the extent Mr. Dos Santos intends to advance a discrimination or retaliation claim
7 separate from his fair representation claim, again, he does not identify his legal theory, nor does
8 he introduce any facts in support of such claims. Although the Court liberally construes Mr. Dos
9 Santos’ pleadings, he must still produce “a short and plain statement of [his] claim showing that
10 [he] is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This standard “does not require ‘detailed factual
11 allegations,’ but it demands more than an unadorned, the-defendant-unlawfully-harmed-me
12 accusation.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

13 The Court agrees with Defendants: even construing Mr. Dos Santos’s allegations liberally,
14 *see McGuckin*, 974 F.2d at 1055, and in his favor, *see Livid Holdings*, 416 F.3d at 946, Mr. Dos
15 Santos’s submissions do not allege any facts that would allow the Court to reasonably infer that
16 Local 8 acted arbitrarily or in bad faith, or that it discriminated or retaliated against Mr. Dos Santos.
17 Therefore, the Court GRANTS Defendants’ motion to dismiss Mr. Dos Santos’s complaint.

18 **D. Leave to Amend**

19 On a Rule 12(b)(6) motion, “a district court should grant leave to amend even if no request
20 to amend the pleading was made, unless it determines that the pleading could not possibly be cured
21 by the allegation of other facts.” *Cook, Perkiss & Liehe v. N. Cal. Collection Serv.*, 911 F.2d 242,
22 247 (9th Cir. 1990). Here, the deficiencies in Mr. Dos Santos’s complaint may be cured by

23 _____
24 ¹ The Court considers factual allegations in Mr. Dos Santos’s response in accordance with its obligation to construe
pro se pleadings liberally. *See McGuckin*, 974 F.2d at 1055.

1 identifying a specific cause of action and alleging specific facts in support of that cause of action.
2 Accordingly, the Court GRANTS Mr. Dos Santos leave to amend his complaint. Mr. Dos Santos
3 shall file an amended complaint that cures the deficiencies in his claims against Local 8 by no later
4 than **May 15, 2023**. If Mr. Dos Santos fails to timely file an amended complaint, the Court will
5 DISMISS this matter with prejudice.

6 **III. CONCLUSION**

7 For the foregoing reasons, the Court GRANTS Defendants' motion to dismiss, Dkt. No. 7,
8 and DISMISSES Mr. Dos Santos's complaint with leave to amend. Mr. Dos Santos may file an
9 amended complaint against Local 8 that cures the deficiencies identified herein no later than **May**
10 **15, 2023**.

11 Dated this 24th day of April, 2023.

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Lauren King
14 United States District Judge
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